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JURISPRUDENCE IN AMERICAN UNIVERSITIES.

It is a matter of surprise that so little has been done by American universities in the way of affording instruction in jurisprudence. Some of the universities, indeed, that have schools of law, offer brief courses in general and comparative jurisprudence, and all such necessarily have full courses in the technical branches of English and American municipal law. Most universities of the higher rank have a moderate amount of instruction in international and constitutional law, and a few offer very superior advantages in these respects. In most of the best schools of history and political science administrative law receives a fair share of attention. Roman law is also offered in many of the leading universities. But in no institution in the country is there anything corresponding to the complete and systematic teaching of jurisprudence such as one sees at Oxford and Cambridge, and at Berlin, Heidelberg, Leipzig, and in some degree at all of the German universities.

Of the work of our law schools in preparing students for the bar, it is not my purpose to speak. Sir Frederick Pollock has very recently declared that, "For the present the only way of seeing for oneself that English law can be taught in a systematic and efficient manner, as well as other branches of learning, is to go and see it in America." This is high praise, perhaps only too high. Certainly, the recent report of the Committee on Legal Education of the American Bar Association takes a more modest and less flattering view of the condition of law schools in this country, and strongly urges the adoption of some more systematic method of legal instruction. In the first place, it appears that only about one-fifth of those who are admitted to the bar pass through the law schools. In the next place, the committee complain that too much of the teaching in the law schools

is purely empirical, and consists in the conning of rules and the framing of formulas. Into the justice or injustice of these foreign and domestic opinions, it is now unnecessary to enter. The fact cannot be blinked that, for the most part, the law schools are intended to serve only the interests of the legal profession, and therefore form no part of the general university instruction.

On the importance of a study of jurisprudence to all students of political science, history, ethics, religion, and, perhaps I may add, literature, it would seem to be unnecessary to enlarge. The history of law and the history of political institutions are so indissolubly united, that the one cannot be understood without the aid of the other. Sir Henry Maine and Professor Stubbs have sufficiently proved this fact in their respective fields of research. In the early stages of society, religion, ethics and law can with difficulty be separated. The lawyer and the priest are one, and that one is, moreover, a poet. All early literature is the literature of this law-giving poet-priest. Indeed, Teuffel and Sir Henry Maine, approaching the subject from the two opposite sides of the critic and the jurist, agree in the conclusion that the only literature of the Romans which can lay claim to any originality, or which is in any sense characteristically Roman, is their legal literature. So closely, then, does law touch every human interest that we may almost agree with Professor Pomeroy that, "it is, in short, the summing up of almost all knowledge not strictly physical."

Nor has it escaped notice that there is a striking parallel between the historical method of studying institutions and of investigating nature. One eminent writer has said: "The doctrine of evolution is nothing else than the historical method applied to the facts of nature; the historical method is nothing else than the doctrine of evolution applied to human societies and institutions. When Charles Darwin created the philosophy of natural history * * * he was working in the same spirit and towards the same ends as the great publicists who, heeding his field of labor as little as

he heeded theirs, had laid in the patient study of historical fact the bases of a solid and rational philosophy of politics and law." It is, perhaps, more than a coincidence that Charles Darwin and Sir Henry Maine should, within the brief space of two years, have given to the world two such books as the "Origin of Species" and "Ancient Law," both of which mark an epoch in the history of human thought. Any system of education that does not take account of both is outside the full current of intellectual progress.

Now, if any people on earth ought to study jurisprudence, it is the people of the United States. Any self-governing people ought to have among them a large body of students—the larger, the better—who are familiar with the best results of historical and comparative jurisprudence, and the theory of legislation. If they are also familiar with practical and analytical jurisprudence, so much the better. But if, as is too often the case, they are familiar with no one of these subjects, or at least with only disconnected sections of them, then so much the worse for them and for the public. In these days of constitution-mongering and statute-tinkering, it is the part of wisdom to have an educated body of citizens who shall know some fraction of this "summing up of almost all knowledge not strictly physical," and be able to apply it in the solution of our modern problems of government and justice. Perhaps I may be pardoned for saying that it is a pity that these matters must fall so largely into the hands of professional lawyers. But at present there is no other considerable body of citizens fitted to undertake them; and the consequence is that needed reforms are long delayed, or are burdened with the technicalities of law that a little knowledge of historical and comparative jurisprudence would speedily remove. It was a layman who brought about the most important legal and economic reform of the century, the system of registry of land titles—a system which has uniformly been opposed by the great body of lawyers bred in the technicalities growing out of

the feudal system of tenure, and which has thus far found no favor in the United States. It is simply impossible to conceive the economic saving that would result to our people from the adoption of such a system as that invented by Sir Robert Torrens, or that has resulted in Australia and Canada and other English colonies where it has been introduced. If the teaching of the history of English law, to take a single example, would convince the university graduates of the coming generation that the ancient land laws of England, as they were developed under the influence of the feudal system, need not be superstitiously revered as the perfection of human wisdom, and should thereby create a sentiment for such a reform as has been indicated, this alone would save to the people a thousand times over every dollar spent in the giving of such instruction. If the economic results of the teaching of jurisprudence would be thus incalculable, the political results would be even more so. While a Chair of Jurisprudence, any more than a Chair of Political Science, should never become a propaganda, it is inevitable that like causes should produce like effects, and, after all, progress is aided more by intelligence than by ignorance.

American universities would do well to keep in view the results of the experience of the English and continental universities in teaching jurisprudence, and in this they will be greatly aided by the articles which have already appeared in the *ANNALS* on "Instruction in Public Law and Economics in Germany," by Leo S. Rowe and others, July and October, 1890, and "The Teaching of Political Science at Oxford," by D. G. Ritchie, July, 1891. I would also call attention to the provisions for such teaching at the other great English universities, so far as they relate to jurisprudence.

At Cambridge University the course offered in Jurisprudence is as follows :*

* See reprint from the *Jurist* in the *Columbia Law Times*, Vol. ii., No. 3, p. 95.

PART I.

- (1) General Jurisprudence.
- (2) The History and General Principles of Roman Law.
- (3) The Institutes of Gaius and Justinian.
- (4) A selected portion of the Digest.
- (5) English Constitutional Law and History.
- (6) Public International Law.
- (7) Essays and Problems.

PART II.

- (1 and 2) The English Law of Real and Personal Property, with the equitable principles applicable to these subjects.
- (3 and 4) The English Law of Contract and Tort, with the equitable principles applicable to these subjects.
- (5) The English Criminal Law, including procedure and evidence.
- (6) Essays.

This course, it is to be remembered, is not merely a law school course ; it is primarily a university course, intended as a part of an educated Englishman's intellectual fitting. Such names as those of Clark, Westlake, Maitland and Courtney Kenny are a sufficient indication of how well the work is done. Students who pass both parts of this course are entitled to the degrees of B. A. and LL. D., and may take either or both of them. The same degrees are granted upon the completion of one of these parts and one part of any other course on "Tripos."

At Oxford greater stress is laid on comparative jurisprudence than at Cambridge, and indeed such could not have failed to be the case under the leadership of the last two incumbents of the Corpus Professorship of Jurisprudence, Sir Henry Maine and Sir Frederick Pollock.

Just what would be a proper and practicable course in an American university is a question that must be settled on the lines of the development theory. As yet no efficient attempt has been made to frame such a course, and all suggestions or experiments must necessarily be tentative. Such a course, however, would need to take account in some form of the following subjects :

JURISPRUDENCE IN AMERICAN UNIVERSITIES.

- (1) The Elements of Jurisprudence.
- (2) Private Municipal Law (English and American).
- (3) Public Municipal Law (English and American).
- (4) Constitutional Law.
- (5) Ancient Law.
- (6) Roman Law.
- (7) Comparative Jurisprudence.
- (8) International Law.
- (9) Final Jurisprudence, or the Theory of Legislation.

In some respects an American university has peculiar advantages for the teaching of jurisprudence in a systematic and thorough manner. It is more homogeneous than an English university, and its students are more permanent than those of a German university. Moreover, our Federal system offers advantages not fully appreciated, perhaps because of their very familiarity, but which a foreigner is quick to perceive. In his inaugural lecture at Oxford, Sir Frederick Pollock said :

“ Since the classical period of Roman law there has never been a constitution of affairs more apt to foster the free and intelligent criticism of legal authorities, the untrammelled play of legal speculation and analysis, than now exists in the States of the American Union, where law is developed under many technically independent jurisdictions, but in deference and conformity to a common ideal. We are justified, therefore, in expecting that our American colleagues will not be behindhand in the work to which, in this generation, jurisprudence appears to be specially called.”

Shall our kinsmen across the Atlantic be disappointed in the high conception which they have formed of our readiness to rise to the full stature of our possibilities ?

ERNEST WILSON HUFFCUT.

Indiana University, School of Law.